

**No. PD-0947-16**

**IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
1/5/2017  
ABEL ACOSTA, CLERK

**JUSTIN TIRRELL WILLIAMS**  
*Petitioner*

**v.**

**THE STATE OF TEXAS**  
*Respondent*

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On Petition for Discretionary Review from the First Court of Appeals in  
No. 01-15-00871-CR affirming the conviction in Cause Number 1387897  
From the 209th District Court of Harris County, Texas

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**REPLY BRIEF FOR PETITIONER**

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## TABLE OF CONTENTS

COVER PAGE .....	1
IDENTITY OF JUDGE, PARTIES, AND COUNSEL .....	2
TABLE OF CONTENTS .....	3
INDEX OF AUTHORITIES.....	5
Cases .....	5
Statutes .....	5
Rules .....	5
Secondary Authorities .....	5
ARGUMENT IN REPLY TO THE STATE’S BRIEF.....	6
<u>First Ground of Review.</u> This ground of review assumes that a separate \$5 court cost for releasing a defendant from jail is appropriate. The Court of Appeals upheld the trial court’s assessment of a \$5 cost for “release” because the defendant was “released” to prison. Did the Court of Appeals err in affirming the assessment of a cost for “release” when the defendant was “released” to prison?.....	6
<u>Second Ground of Review.</u> This ground of review assumes that a \$5 cost for releasing a defendant to prison is appropriate. Costs for peace officer services are to be assessed for services performed “in the case.” The Court of Appeals upheld the trial court’s assessment of a \$5 cost even though the sheriff released Mr. Williams to prison following trial. Did the Court of Appeals err in upholding the cost assessment because the release occurred after the trial concluded? .....	11

<u>Third Ground of Review.</u> This ground of review assumes a \$5 cost for releasing a defendant to prison is appropriate even though the release occurs after trial. The Court of Appeals upheld the \$5 cost’s assessment even though there had been no release at the time the bill of costs was prepared. Did the Court of Appeals err in affirming the assessment of a cost for which a service had not yet been performed? .....	12
PRAYER .....	16
CERTIFICATE OF SERVICE .....	17
CERTIFICATE OF COMPLIANCE .....	18

## INDEX OF AUTHORITIES

### Cases

<i>Ex parte Hernandez</i> , 827 S.W.2d 858 (Tex. 1992) .....	10
<i>In the Interest of A.M.C.</i> , 491 S.W.3d 62 (Tex. App.—Houston [14 <sup>th</sup> Dist.] 2016, no pet.) .....	10
<i>Mims v. State</i> , 3 S.W.3d 923 (Tex. Crim. App. 1999) .....	6
<i>Williams v. State</i> , 495 S.W.3d 583 (Tex. App.—Houston [1 <sup>st</sup> Dist.] 2016, pet. granted) .....	14

### Statutes

Tex. Code Crim. Proc. Ann. art. 16.20 (West 2005) .....	10
Tex. Code Crim. Proc. Ann. art. 102.011 (West Supp. 2015) .....	8
Tex. Code Crim. Proc. Ann. art. 102.011(a)(6) (West Supp. 2015) .....	7
Tex. Code Crim. Proc. Ann. art. 103.002 (West 2006) .....	12-15
Tex. Gov't Code Ann. § 312.002(a) (West 2013) .....	6

### Rules

Tex. R. App. P. 9.4 (i)(1) .....	18
Tex. R. App. P. 9.4 (i)(2)(C) .....	18
Tex. R. App. P. 9.4 (i)(3) .....	18
Tex. R. App. P. 9.5 .....	17

### Secondary Authorities

Lewis Carroll, <i>Alice's Adventures in Wonderland</i> .....	6-8, 14-15
Ron Beal, <i>The Art of Statutory Construction: Texas Style</i> , 64 Baylor L. Rev. 339 (2012) .....	8

## ARGUMENT IN REPLY TO THE STATE’S BRIEF

*“Well, I never heard it before, but it sounds uncommon nonsense.”<sup>1</sup>*

### FIRST GROUND OF REVIEW

**This ground of review assumes that a separate \$5 court cost for releasing a defendant from jail is appropriate. The Court of Appeals upheld the trial court’s assessment of a \$5 cost for “release” because the defendant was “released” to prison. Did the Court of Appeals err in affirming the assessment of a cost for “release” when the defendant was “released” to prison?**

The State says Mr. Williams was not “released to the Soylent Green factory.”<sup>2</sup> True enough! But as the State acknowledges, Mr. Williams was not taken out of the county jail and permitted to “rejoin society” either.<sup>3</sup> Only in some kind of Alice-in-Wonderland world – where words have no meaning – does sending a man to prison mean he has been “released.”<sup>4</sup>

The Code Construction Act tells us that “words shall be given their ordinary meaning.”<sup>5</sup> As Judge Keller wrote in *Mims v. State*:

The first rule of statutory construction is that we interpret statutes in accordance with the plain meaning of their language unless the statutory language is ambiguous or the plain meaning leads to absurd results.<sup>6</sup>

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<sup>1</sup> Lewis Carroll, *Alice’s Adventures in Wonderland* (1865).

<sup>2</sup> See State’s Brief at 15.

<sup>3</sup> See State’s Brief at 15 (defendant was “released to a distinctly different environment . . . from where he might eventually rejoin society”) (emphasis added). Given that Mr. Williams was sentenced to serve 99 years in one of the three convictions, this eventuality is a long ways off. See 3 C.R. at 90

<sup>4</sup> “‘If there is no meaning in it,’ said the King, ‘that saves a world of trouble, you know, as we needn’t try to find any.’” Lewis Carroll, *Alice’s Adventures in Wonderland* (1865).

<sup>5</sup> Tex. Gov’t Code Ann § 312.002(a) (West 2013).

<sup>6</sup> *Mims v. State*, 3 S.W.3d 923, 923-24 (Tex. Crim. App. 1999).

Mr. Williams encourages this Court to follow this sound direction in regard to this ground of review.

Three other points made by the State concerning this ground of review warrant a response. First, the State says “treating the termination of the sheriff’s custody as a release fulfills the apparent legislative intent behind allowing the sheriff to recoup some of his expenses in handling prisoners.”<sup>7</sup> Such treatment may indeed allow for the recoupment of some expenses for handling prisoners. But if the Legislature wanted to impose a court cost for the sheriff’s handling of prisoners, then the Legislature should have established a “prisoner-handling fee.” This, the Legislature did not do. Rather, the Legislature established a fee for “releasing” a prisoner.<sup>8</sup> “Handling” a prisoner and “releasing” a prisoner are not the same thing.<sup>9</sup> If the Legislature wishes to change the

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<sup>7</sup> State’s Brief at 15.

<sup>8</sup> See Tex. Code Crim. Proc. Ann. art. 102.011(a)(6) (West Supp. 2015).

<sup>9</sup> Alice in Wonderland teaches us this much, as the following passage demonstrates:

‘Do you mean you think you can find the answer to it?’ said the March Hare.

‘Exactly so,’ said Alice.

‘Then you should say what you mean,’ the March Hare went on.

‘I do,’ Alice hastily replied; ‘at least—at least I mean what I say—that’s the same thing you know.’

‘Not the same thing a bit!’ said the Hatter. ‘You might just as well say that “I see what I eat” is the same thing as “I eat what I see”!’

‘You might just as well say,’ added the March Hare, ‘that “I like what I get” is the same thing as “I get what I like”!’

‘You might just as well say,’ added the Dormouse, who seemed to be talking in his sleep, that “I breathe when I sleep” is the same thing as “I sleep when I breathe”!’

‘It is the same thing with you,’ said the Hatter . . . .

Lewis Carroll, *Alice’s Adventures in Wonderland* (1865).

wording (and, accordingly, the meaning) of the law, it is free to do so every two years.

But “[i]t is not the province of the judiciary to write the law or change the law.”<sup>10</sup>

Second, the State makes the following argument:

If the appellant’s interpretation of the term “release” were to prevail, the court costs for his release could not be collected until the appellant had been released from prison. But there is no provision for such collection. . . . Therefore, the appellant’s interpretation of the term “release” cannot be correct, and that of the court of appeals should be affirmed.<sup>11</sup>

The statement above is partially correct and partially incorrect. The State is correct about there being no statutory provision for the assessment of a court cost upon a defendant’s release from prison. But the State is incorrect in concluding that this means Mr. Williams’ interpretation of the term “release” is necessarily erroneous. The State may wish to consider that perhaps there are situations in which a court cost for “release” should not be assessed at all. Article 102.011 requires a defendant to pay certain fees for the services of peace officers.<sup>12</sup> But not all of the many services listed in Article 102.011 are assessed in every case. This is because not all of the listed services are performed in every case. The case at bar is simply a case in which the service

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<sup>10</sup> Ron Beal, *The Art of Statutory Construction: Texas Style*, 64 Baylor L. Rev. 339, 351 (2012).

<sup>11</sup> State’s Brief at 15.

<sup>12</sup> See Tex. Code Crim. Proc. Ann. art. 102.011 (West Supp. 2015).

described as “release” was never performed. Therefore, the fee for release should not be charged.

Third, the State contends that:

[e]ven if the appellant were correct in his assumption that the term “release” does not include a release by the sheriff to the custody of the prison system, such a transfer of custody would nevertheless constitute a commitment, which permits an assessment of the same \$5 court cost.<sup>13</sup>

There are two problems with this argument. Initially, please note that Mr. Williams was not charged two commitment fees. Rather, he was charged one \$5 fee for commitment and another \$5 fee for release.<sup>14</sup> He was not charged two \$5 fees for commitment. Mr. Williams does not complain of the one \$5 commitment fee as there is no question he was committed to jail following his arrest. But he does, of course, complain of the \$5 release fee. It is no answer to Mr. Williams’ complaint for the State to say that the \$5 release fee was really for a second commitment. If this were true, then the bill of costs should have reflected a \$10 fee for commitment (two \$5 commitments) and no fee for release.

The other problem with the State’s argument is that the Code of Criminal Procedure explicitly defines the term “commitment” as:

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<sup>13</sup> State’s Brief at 16.

<sup>14</sup> 1 C.R. at 128 (lines 6 and 7 in the left column of the bill of costs).

an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed.<sup>15</sup>

The two cases cited by the State do not extend the concept of commitment beyond a placement in jail. *Ex parte Hernandez* concerned an order that one Ray O. Hernandez be confined in the county jail for 180 days.<sup>16</sup> The case had nothing to do with transferring a person from a jail to a prison. Similarly, the commitment order in *In the Interest of A.M.C.* was for 180 days in jail.<sup>17</sup> Prison was simply not part of the picture in either of these two cases. No fee should be assessed for “committing” a person to prison.

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<sup>15</sup> Tex. Code Crim. Proc. Ann. art. 16.20 (West 2005) (emphasis added).

<sup>16</sup> *Ex parte Hernandez*, 827 S.W.2d 858, 859 (Tex. 1992).

<sup>17</sup> *In the Interest of A.M.C.*, 491 S.W.3d 62, 64 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2016, no pet.).

## SECOND GROUND OF REVIEW

This ground of review assumes that a \$5 cost for releasing a defendant to prison is appropriate. Costs for peace officer services are to be assessed for services performed “in the case.” The Court of Appeals upheld the trial court’s assessment of a \$5 cost even though the sheriff released Mr. Williams to prison following trial. Did the Court of Appeals err in upholding the cost assessment because the release occurred after the trial concluded?

As correctly noted by the State,<sup>18</sup> counsel for the Petitioner no longer believes the second ground of review is valid. Accordingly, no further discussion of this ground of error is warranted.

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<sup>18</sup> See State’s Brief at 16.

### THIRD GROUND OF REVIEW

**This ground of review assumes a \$5 cost for releasing a defendant to prison is appropriate even though the release occurs after trial. The Court of Appeals upheld the \$5 cost's assessment even though there had been no release at the time the bill of costs was prepared. Did the court of appeals err in affirming the assessment of a cost for which a service had not yet been performed?**

The State contends that Mr. Williams should have raised “this Article 103.002 argument” in the court of appeals.”<sup>19</sup> According to the State, “this Article 103.002 argument” means “the premise that a court cannot assess ‘a cost for which a service had not yet been performed.’”<sup>20</sup> Further, the State says “the court of appeals never ruled on [the argument].”<sup>21</sup>

The State is right in one sense: Mr. Williams never explicitly mentioned “Article 103.002” in the Court of Appeals. But the State errs in suggesting Mr. Williams failed to assert that a fee cannot be assessed for a service that has not been performed. As the following discussion will reveal, Mr. Williams made this very assertion in his reply brief in the Court of Appeals.

In his original brief in the Court of Appeals, Mr. Williams argued the \$5 release fee was improper because he was never released from jail.<sup>22</sup> His counsel did not anticipate the State’s argument that a transfer to prison constitutes a release. But, the

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<sup>19</sup> State’s Brief at 17.

<sup>20</sup> State’s Brief at 17.

<sup>21</sup> State’s Brief at 17.

<sup>22</sup> See Appellant’s Brief in the Court of Appeals at 46-48.

State did, of course, file a brief in the Court of Appeals advancing this argument.<sup>23</sup> In his reply brief, Mr. Williams argued that even if a transfer is a “release,” the transfer occurred after the bill of costs was prepared. This, Mr. Williams asserted, was a problem:

Each of the three bills of costs in the current appeal list the release fee. (1 C.R. at 128; 2 C.R. at 100; 3 C.R. at 92). The bills of costs are all marked with an “assessed date” of October 2, 2015. (1 C.R. at 128; 2 C.R. at 100; 3 C.R. at 92). This is the same date as the date the judgment was entered. Mr. Williams was in court that day and had not yet been sent to prison. Was the bill of costs purporting to charge Mr. Williams for a service that had not yet been performed? Probably not. This is because such a charge would have been improper in light of the language in Article 102.011. This statute calls for a defendant to pay for the services of peace officers “performed [note the past tense] in the case.”<sup>24</sup>

Article 103.002 reads in its entirety as follows:

An officer may not impose a cost for a service not performed or for a service for which a cost is not expressly provided by law.<sup>25</sup>

Mr. Williams’ reply brief challenged the assessment of the \$5 release fee for a service that “had not yet been performed.”<sup>26</sup> Article 103.002 prohibits the imposition of a cost for a service not performed. Mr. Williams’ reply brief put the Court of Appeals

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<sup>23</sup> See State’s Brief in the Court of Appeals at 17-18.

<sup>24</sup> Appellant’s Reply Brief in the Court of Appeals at 11 (emphasis added).

<sup>25</sup> Tex. Code Crim. Proc. Ann. art. 103.002 (West 2006).

<sup>26</sup> Appellant’s Reply Brief in the Court of Appeals at 11.

on notice that he was challenging the assessment of a fee for a service that had not been performed. The State is incorrect in its claim that Mr. Williams did not raise an “Article 103.002 argument in the court of appeals.”<sup>27</sup>

Assuming the argument has been preserved, the State maintains that “Article 103.002 does not prohibit the imposition of a cost for a service not *yet* performed.”<sup>28</sup> The State takes this position notwithstanding Article 103.002’s explicit declaration that “[a]n officer may not impose a cost for a service not performed.”<sup>29</sup> The State reasons that the assessment of the release fee on October 2<sup>nd</sup> was just fine because a release ultimately occurred on November 5<sup>th</sup>.<sup>30</sup>

To accept the foregoing argument would be to countenance charging defendants now for services that *might* be performed later. With all due respect to the State, this does not make sense. The proper order of things requires service to precede billing. To reverse the order of things would cause billing to precede service. As noted in Mr. Williams’ original brief, if a charge for a “release” to prison were

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<sup>27</sup> See State’s Brief at 17. The State is correct in saying that the Court of Appeals “never ruled on” the Article 103.002 argument. See *Williams v. State*, 495 S.W.3d 583, 591-92 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2016, pet. granted). But this was not because Mr. Williams failed to advance the argument. The Court of Appeals’ failure to address this argument is one of the reasons Mr. Williams filed a petition for discretionary review in this case.

<sup>28</sup> State’s Brief at 17 (*italics in the original*).

<sup>29</sup> See Tex. Code Crim. Proc. Ann. art. 103.002 (West 2006).

<sup>30</sup> These dates are both in 2015 and are set out in Appellant’s Brief at 25. Appellant’s Brief mistakenly places the November 5<sup>th</sup> date in 2016. The proper year is actually 2015.

appropriate, a supplemental bill of costs could have been employed.<sup>31</sup> Alternatively, the fee could have been listed as a conditional fee in the original bill of costs.<sup>32</sup>

Assessing a \$5 release fee unconditionally in an original bill of costs – when there has been no release at that time – violates Article 103.002. Moreover, such an assessment simply does not make logical sense.<sup>33</sup>

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<sup>31</sup> See Brief for Petitioner at 26.

<sup>32</sup> See Brief for Petitioner at 26-27.

<sup>33</sup> Cf. Lewis Carroll, *Alice's Adventures in Wonderland* (1865) (As Alice said part of the way through her adventure, "It would be nice if something made sense for a change.").

## **PRAYER**

Mr. Williams prays that this Court answer grounds of review one and three affirmatively. Mr. Williams also prays that this Court answer ground of review two negatively. Accordingly, Mr. Williams prays that this Court reverse the Court of Appeals' decision affirming the imposition of the \$5 court cost for release. Further, Mr. Williams prays that this Court order the \$5 court cost for release to be deleted from the bill of costs in this cause.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

Pursuant to Tex. R. App. P. 9.5, I certify that on January 3, 2017, I provided this brief to counsel for the State via the EFILETEXAS.gov e-filing system at the following addresses:

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## CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief contains 2,471 words. This word-count is calculated by the Microsoft Word program used to prepare this petition. The word-count does not include those portions of the petition exempted from the word-count requirement under Texas Rule of Appellate Procedure 9.4(i)(1). The number of words permitted for this type of computer-generated petition (a brief in an appellate court) is 7,500. Tex. R. App. P. 9.4(i)(2)(C).

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